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**In The United States District Court
For The District of Wyoming**

FIRSTMARK CONSTRUCTION, LLC, a
Montana Limited Liability Company,

Plaintiff,

vs.

MOUNTAIN CONSTRUCTION
COMPANY, a Wyoming Corporation, and
EMPLOYERS MUTUAL CASUALTY
COMPANY, an Iowa Corporation,

Defendants.

MOUNTAIN CONSTRUCTION COMPANY,
A Wyoming Corporation,

Counter-Claimant and Third-Party
Plaintiff,

vs.

FIRSTMARK CONSTRUCTION, LLC, a
Montana Limited Liability Company; and
FIDELITY AND DEPOSIT COMPANY
OF MARYLAND, an Illinois Corporation,

Counter-Defendant and Third-Party
Defendant

Civil No. 20-CV-97-F

**PARTIES' JOINT MOTION TO AMEND THE PRE-TRIAL ORDER
AND CONTINUE THE TRIAL**

Plaintiff FirstMark Construction, LLC (“Plaintiff”), Defendants Mountain Construction Company (“MCC”) and Employers Mutual Casualty (“EMC”) and Third-Party Defendant Fidelity and Deposit Company of Maryland (“FDCM”) respectfully file this motion to amend the Pre-Trial Order and continue the trial.

1. The current Pretrial Order (Dkt. No. 25), modified by this Court’s May 25, 2021 (Dkt. No. 37) and June 10, 2021 (Dkt. No. 43) orders, has set the following deadlines:

- a. FirstMark to file its Rebuttal Expert Designations and Reports: June 25, 2021
- b. Dispositive Motions: July 9, 2021
- c. Dispositive Motion Response: July 23, 2021
- d. Fact Discovery: July 25, 2021
- e. Final pre-trial conference: September 13, 2021 at 1:30 p.m.; and
- f. Jury Trial: October 12, 2021.

2. On June 7, 2021 Hall & Evans, LLC entered its appearance in this case replacing Holland & Hart LLP as counsel for FirstMark and FDCM. On June 9, 2021 this Court granted FirstMark’s and FDCM’s Motion allowing Holland & Hart LLP to withdraw as counsel.

3. As discussed with the Court during the June 10, 2021 status conference, while Hall & Evans is expeditiously getting up to speed on this matter, the parties do not believe it is possible to meet the current deadlines in the Pre-Trial Order and to be ready for a trial in October of this year and good cause exists to extend the above referenced dates and continue the trial until the Fall of 2022.

4. First, counsel for FirstMark and FDCM has determined that while formal written discovery has been exchanged, necessary fact witness depositions have yet to be taken. The parties need time to take the corporate representative depositions of MCC and FirstMark, the

depositions of several FHWA employees (of which there has been some difficulty coordinating the scheduling of), the depositions of several Park County Officials, several depositions of third-parties who were actively involved in the construction, and need to send several Touhy requests for documents to the FHWA that have not yet been issued. Given the above, the parties do not believe it will be possible to complete the same within the time constraints set forth in the current case management order and to be ready for a trial in October of this year. As Hall & Evans has just appeared in this case, good cause exists to extend the time within which to complete this necessary discovery and to continue the trial date until the Fall of 2022.

5. Second, the parties have determined that additional time is needed to respond to expert reports. The Pretrial Order provided that the parties would file simultaneous affirmative expert designations and reports on April 16, 2021 and file responsive expert designations and reports on May 28, 2021. FirstMark's own expert reports were disclosed on April 16, 2021, but MCC did not file an affirmative expert report. The parties filed a stipulation motion to extend the discovery and expert motion deadline, whereby MCC agreed to file responsive expert reports on or before May 28, 2021 and FirstMark and FDMC would be permitted to file rebuttal reports on or before June 25, 2021, which was granted by this Court on May 25, 2021. In accordance with that order, MCC filed its expert disclosures on May 28, 2021. The disclosures total over 900 pages and encompass reports from three different experts for MCC. While these disclosures are currently being reviewed, analyzed and responded to by FirstMark's experts, after a preliminary review, it has been determined that additional discovery will be necessary to respond to the same, including but not limited to the fact discovery discussed above. Accordingly, good cause exists to allow FirstMark additional time beyond the June 25, 2021 date set forth in the Pretrial Order to respond.

6. Third, as FirstMark and FDMC's counsel advised the Court at the June 10, 2021 status conference in this matter, FirstMark recently went out of business and may possibly enter into bankruptcy proceedings, which would in all likelihood stay this case. It is counsel's understanding that FirstMark is having ongoing discussions and negotiations regarding the same and will be making a decision as to whether it will be filing for bankruptcy in the near term. In addition to the possibility that this case may be stayed, the parties also anticipate that FirstMark's dissolution will have impacts on FirstMark's ability to respond to discovery requests, produce knowledgeable witnesses for corporate representative depositions, and otherwise prepare this case for trial in a timely manner. Accordingly, the parties believe that good cause exists to allow additional time for this process to play out while the parties engage in fact and expert discovery and believe that a continuance of the trial date to the Fall of 2022 is appropriate.

7. Based on the above, the parties have conferred and are in mutual agreement that it is their best interest, and in the interest of justice, to amend the scheduling order to permit FirstMark's new counsel, Hall & Evans, time to get up to speed on the case, to allow for time for necessary fact and expert discovery, and to allow time to determine the potential impact FirstMark's dissolution and potential bankruptcy may have on the case.

8. Accordingly, the parties respectfully request that the Court grant this Stipulated Motion To Amend the Pretrial Order and continue the trial and set the following dates agreed to between the parties:

- a. Rebuttal Expert Reports: October 15, 2021
- b. Mediation: Spring 2022
- c. Close of Discovery: May 17, 2022
- d. Dispositive Motions: June 10, 2022

- e. Dispositive Motion Response: June 24, 2022
 - f. Dispositive Motion Hearing: July 15, 2022
 - g. Final Pre-trial Conference: August 17, 2022.
 - h. Jury Trial: September of 2022
9. A proposed order is filed contemporaneously herewith.

DATED THIS 14th day of June, 2021.

/s/ Stephen Joseph Darrah

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